

Paul R. Niehaus (PN-3994)  
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**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK**

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 BLAIR C. FENSTERSTOCK, CONSTANCE : Civil Action No. 09-cv-6670 (HB)  
 J. THOMAS, a.k.a. CONSTANCE J. : ECF Case  
 FENSTERSTOCK, *and all others* :  
*similarly situated,* :  
 :  
 Plaintiffs, : NOTICE OF REMOVAL  
 :  
 -against- :  
 :  
 VERIFIED IDENTITY PASS, INC., STEVEN :  
 BRILL, and DOE DEFENDANTS 1-25, :  
 :  
 Defendants. :  
 -----X

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
 THE SOUTHERN DISTRICT OF NEW YORK

Defendants Verified Identity Pass, Inc. (“VIP”) and Steven Brill (“Brill”, together with  
 VIP, “Defendants”), hereby respectfully submit this Notice of Removal of this putative civil  
 class action captioned *Blair C. Fensterstock, Constance J. Thomas, a.k.a. Constance J.*  
*Fensterstock, and all others similarly situated, v. Verified Identity Pass, Inc., Steven Brill and*  
*Doe Defendants 1-25*, Index No. 602123/2009, in the Supreme Court of the State of New York,  
 County of New York, to the United States District Court for the Southern District of New York.  
 This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1441 and 1446. As grounds for  
 removal, Defendants state as follows:

1. Complaint. Plaintiffs Blair C. Fensterstock, and Constance J. Thomas a.k.a. Constance J. Fensterstock (“Plaintiffs”) commenced this action by Summons and Complaint filed on or about July 9, 2009 in the Supreme Court of the State of New York, County of New York (“State Court”) as a putative class action on behalf of themselves and all others similarly situated. No motions have been made or responsive pleadings filed.

2. Removal is Timely. Neither Defendant has been formally served with the Summons or Complaint in this matter. Defendants became aware of the action on or about July 18, 2009, when Defendant Brill’s son found a copy of the Summons and Complaint lying outside Brill’s apartment. Accordingly, this Notice of Removal is timely filed within the thirty days allotted for removal under 28 U.S.C. § 1446(b).

3. Basis for Jurisdiction and Venue in this Court. This is a civil action and putative class action over which this Court has original jurisdiction under 28 U.S.C. § 1332(d) and is one that may be removed to this Court by Defendants based upon class action diversity jurisdiction pursuant to 28 U.S.C. §§ 1441 and 1446 because it is a class action where the putative class consists of at least 100 members, at least one member of the putative class of plaintiffs is a citizen of a different state from at least one defendant, and where the aggregate amount in controversy exceeds \$5,000,000.00 exclusive of interest and costs. Venue is proper in this Court under 28 U.S.C. § 1441(a) because the State Court is located in this Court’s district and division.

4. Citizenship for Plaintiff. The named Plaintiffs are residents of the state of New York.

5. Citizenship for Defendants. VIP is a Delaware corporation with its principal place of business located at 600 Third Avenue, 10<sup>th</sup> Floor, New York, New York. Brill is a resident of New York State.

6. Amount in Controversy. This is a putative civil class action where the amount in controversy, exclusive of interest and costs, exceeds the sum of \$5,000,000.00. At various paragraphs in the Complaint, Plaintiffs allege class damages aggregating to at least \$250,000,000.00. Plaintiffs further seek \$750,000,000.00 in punitive damages.

7. Pleadings and Process. Pursuant to 28 U.S.C. § 1446(a), copies of the following court papers filed in the State Court action are attached as Exhibits:

- *Summons and Class Action Complaint*, annexed hereto as Exhibit A.
- *Order to Show Cause*, entered July 23, 2009, and supporting papers, annexed hereto as Exhibit B.

No other process or pleadings were served upon or otherwise received by Defendants in the State Court action.

8. Notice to State Court. True and correct copies of this Notice of Removal with accompanying exhibits and a Notice of Filing of Notice of Removal will be served upon Plaintiff's counsel and filed with the Clerk of the Supreme Court of New York, County of New York, in accordance with 28 U.S.C. § 1446(d).

9. Filing Fee. Defendants file and present herewith the sum of \$350.00 as required by 28 U.S.C. § 1446.

[CONTINUED ON NEXT PAGE]

WHEREFORE, Defendants Verified Identity Pass, Inc. and Steven Brill respectfully remove this case from the Supreme Court of New York, County of New York, to this Court.

DATED: July 27, 2009  
New York, New York

HANIFY & KING, P.C.



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*Verified Identity Pass, Inc.*

BOIES, SCHILLER & FLEXNER LLP



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*Attorneys for Defendant Steven Brill*

TO: Blair C. Fensterstock  
Michael T. Phillips, II  
FENSTERSTOCK & PARTNERS LLP  
30 Wall Street, 9<sup>th</sup> Floor  
New York, NY 10005  
(212) 785-4100

*Attorneys for Plaintiffs and the Proposed Class*

-and-

CLERK  
U. S. District Court  
Southern District of New York  
500 Pearl St.  
New York, New York 10007

**AFFIRMATION OF SERVICE**

PAUL R. NIEHAUS, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

1. I am Of Counsel to Hanify & King, P.C., 1359 Broadway, Suite 2001, New York, New York 10018, attorneys for Defendant Verified Identity Pass, Inc. I am over 18 years of age and am not a party to this action.
2. On July 27, 2009, I served true copies of the attached Notice of Removal and Exhibits, and the accompanying Rule 7.1 Statement and Statement of Relatedness by placing same in a post-paid sealed envelope to be delivered by U.S. First Class Mail to:

Blair C. Fensterstock  
Michael T. Phillips, II  
FENSTERSTOCK & PARTNERS LLP  
30 Wall Street, 9th Floor  
New York, NY 10005  
(212) 785-4100

*Attorneys for Plaintiffs and the Proposed Class*

Dated: July 27, 2009  
New York, New York



Paul R. Niehaus